

APPLICANT:
Chenee' D. Butler

REQUEST: A variance to permit a
swimming pool within the Natural
Resource District

HEARING DATE: July 19, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5544

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Chenee' D. Butler

LOCATION: 4400 Antrim Court / Wexford subdivision, Aberdeen
Tax Map: 57 / Grid: 4F / Parcel: 97 / Lot: 9
First (1st) Election District

ZONING: R3 / Urban Residential District

REQUEST: A variance pursuant to Sections 267-41D(5) and 267-41D(6) of the
Harford County Code, to permit a pool within the Natural Resource
District in the R3 District.

TESTIMONY AND EVIDENCE OF RECORD:

Chenee' D. Butler, Applicant, described her property as an approximately 0.2 acre parcel improved by a two-story single family dwelling, with a two-car attached garage.

The Applicant's home is located at the end of Antrim Court, which is a cul-de-sac, and next to a community storm water management facility. The Applicant stated, and Attachment 3 to the Staff Report, which is a plot plan of the property, confirms that her property is heavily encumbered by a Natural Resource District on its southwest side and northwest side, or to the left and rear of the house. The Natural Resource District extends for 25 feet onto the subject property and, in fact, comes to as close as 8 feet to the left side of the residence itself, and to within approximately 13 feet of the rear wall of the residence.

The Applicant states that she and her family desire to construct an in-ground pool to the rear of their house, having dimensions of approximately 40 foot by 20 foot. However, the existence of the Natural Resource District, particularly to the rear of the house, precludes the construction of such a pool without the variance requested. There is simply not enough room to the rear of the house without the variance.

Case No. 5544 – Chenee Butler

The rear yard of the subject property is lawn. The area in which the pool is to be located slopes somewhat downward from the house to the rear of the property. Steeper slopes are on the left side of the home, at which point is located the storm water management facility. Due to the existence of the storm water management facility, the slope of the yard, and the existing Natural Resource District, the pool can not be located to the left of the home. The front yard is encumbered by a front yard setback which precludes the location of a pool in that area. The distance between the right side of the home and the right side property line is 8 feet, which precludes the location of a pool in that area. Accordingly, the only possible location for a pool is to the rear of the home.

The Applicant believes the property is unique because of the existence of the Natural Resource District which heavily encumbers and restricts her property.

The Applicant further indicated that there are several pools in her community, although none are located on Antrim Court.

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated that while the property is somewhat unique because of the extensive area of the Natural Resource District, other lots exist in the subdivision which are similarly affected. None of these lots can accommodate a pool of the size proposed by Ms. Butler. A 40 foot by 20 foot pool would also be surrounded by a concrete apron. Mr. McClune believes that the pool, with its apron, will be so close to the house so as to prohibit the construction of a deck above it. The first above ground level of the home has sliding glass doors which anticipate the construction of a deck. Mr. McClune feels that a deck would be difficult if not impossible to construct given the proximity of the pool and its apron to the rear of the home. The Department's Staff Report states that the pool is simply too big for this property:

"The Code requires that requested variances be the minimum relief necessary. In this case the proposed pool is too large for this lot. Several of the lots in this subdivision could not accommodate a pool of this size."

The file contains an approval of a pool by the Homeowners Association of Wexford, Inc.

There was no evidence or other testimony provided in opposition to the requested variance.

APPLICABLE LAW:

Secton 267-41D(5) of the Harford County Code states:

"(5) Conservation requirements. The following conservation measures are required within this district:

Case No. 5544 – Chenee Butler

- (a) *All development shall minimize soil disturbance during development and shall reduce soil erosion and sedimentation. When developing site plans, consideration shall be given to maintaining the existing drainageways within the Natural Resources District.*
- (b) *Clearing or removal of natural ground cover and vegetation in preparation for development shall be minimized. Site development shall be clustered or designed in such a manner to preserve large contiguous tracts of woodland. Clearing of woodlands shall not reduce the area coverage of trees below seventy percent (70%). Along streams, a buffer with minimum width of fifty (50) feet, plus four (4) feet for each one-percent increase in slope, measured from the water's edge, shall be provided. Trees within the buffer may be harvested to remove diseased, insect-damaged or fire-damaged trees to salvage the same or reduce potential stream blockage due to fallen timber. Essential access roads may be permitted to traverse the buffer.*
- (c) *Sensitive environmental areas, including significant/special natural features, significant wildlife habitats, saturated soils, highly erodible soils and designated scenic areas shall not be disturbed during any development.*
- (d) *Any land in excess of twenty-five-percent slope for an area of forty thousand (40,000) square feet or more shall not be cleared of natural ground cover or vegetation in preparation for development, except for necessary roads and utilities. Not more than thirty percent (30%) of any land in excess of fifteen-percent slope and less than twenty-five-percent slope shall be cleared of natural ground cover or vegetation in preparation for development.*
- (e) *Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.”*

Case No. 5544 – Chenee Butler

Section 267-41D(6) of the Harford County Code states:

“(6) Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant makes a compelling case, particularly supported by the site plan, Attachment 3 to the Staff Report, that her property is unique. The property is approximately 0.214 acres in size, and is improved by a substantial home with attached two car garage. The home is on a cul-de-sac which causes a somewhat curving front yard which has the practical effect of further reducing the buildable portion of the lot. The front yard is impacted by a 25 foot setback; the right yard has an 8 yard minimum distance between the lot line and the house; the left yard almost wholly consumed by the Natural Resource District; and the rear yard is almost wholly consumed by a 25 foot deep Natural Resource District. There is little available space left on the property in which to make any improvements.

Nevertheless, Ms. Butler desires an in-ground pool. She testified other pools exist in the neighborhood. She has permission from the Homeowners Association to construct a pool. She could construct a 40 foot by 20 foot pool except for the existence of the Natural Resource District. The Department of Planning and Zoning acknowledges that the normal rear yard setback is 10 feet. Accordingly, without the Natural Resource District a pool could be constructed as a matter of right without a variance.

It is accordingly found that the Applicant suffers practical difficult because of features unique to her property, which is the existence of an extensive Natural Resource District around two sides of her property. As a result of this practical difficulty she is unable to build a swimming pool similar to others in Harford County.

Note is made of the opposition of the Department of Planning and Zoning which is based upon its opinion that the pool is “too large for this lot.” However, there is no explanation for this finding contained in the Staff Report, nor was there any basis or substantiation for such an observation given during the hearing. This is a completely subjective observation, one which simply cannot be the basis of this recommended opinion. The facts of this case are that Ms. Butler could have built the pool as desired, or one substantially similar in size to that proposed, except for the Natural Resource District. The pool itself is not an unusually shaped or sized pool.

Case No. 5544 – Chenee Butler

It is further found there will be no adverse impact on any adjoining property owner if the pool proposed by Ms. Butler is built as planned. There was no testimony of any adverse impact to the Natural Resource District, nor any indication in the Staff Report of an adverse impact. It is accordingly found that the variance, if granted, will not adversely affect the Natural Resource District.

CONCLUSION:

Accordingly, it is recommended that the requested variance be granted, subject to the Applicant obtaining all necessary permits and approvals.

A further condition of this approval is that the Applicant present to the Harford County Department of Planning and Zoning an existing permit, or obtain a permit, for the shed which is on the Applicant's lot and which the Staff Report indicates apparently does not have a permit.

Date: August 30, 2006 _

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on SEPTEMBER 28, 2006.